

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:  
  
TRACK TWO SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS COUNSEL'S EMERGENCY MOTION TO STRIKE THE  
DECLARATION OF MICHAEL J. LORUSSO, ESQ. IN SUPPORT OF  
OPPOSITION TO TRACK TWO SETTLEMENT**

Accompanying Don Haviland's "Certain Named Plaintiffs' Objections to Plaintiffs' Supplemental Submission in Support of Rebalanced Track Two Settlement" (Dkt. No. 7728, the "Haviland Response") is the Declaration of Michael J. Lorusso, Esq., in Support of Opposition to Track Two Settlement (Dkt. No. 7729, the "Lorusso Declaration"), which purports to calculate "damages" for various Track Two drugs. As detailed in Plaintiffs' Response to Certain Named Plaintiffs' Objections to Plaintiffs' Supplemental Submission in Support of a Rebalanced Track Two Settlement ("Plaintiffs' Response") at pages 2-6, the Lorusso Declaration should be stricken.

Fed. R. Evid. 702 allows expert testimony in the nature of "scientific, technical or other specialized knowledge" through a witness qualified by "knowledge, skill, experience or training...." Mr. Lorusso, an associate attorney in Haviland's law firm, possesses neither the required "scientific, technical or other specialized knowledge," and is not qualified by "knowledge, skill, experience or training" to submit any evidentiary conclusions based on the Track Two Drugs at issue and the calculation of spreads and damages.

Fed. R. Evid. 702 also provides that an expert can testify if the testimony is (1) based upon sufficient facts or data, (2) is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to this case. As demonstrated in Plaintiffs' Response at pages 2-6, which are incorporated herein by this reference so that the Court is not burdened with additional paper, none of the Lorusso gymnastics even remotely come close to meeting these requirements. His purported "damage" calculations contained in Exhibits A through D of the Lorusso Declaration and the conclusions drawn therefrom in the body of the Lorusso Declaration are speculative and based on unreliable methods incorrectly applied to this case. Indeed, those calculations produce completely fictitious "damage" numbers.

Haviland should not be permitted to lard and confuse the record with the Lorusso Declaration, hoping that the First Circuit will be misled by it on appeal, if this Settlement receives final approval. This material should be promptly stricken.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order striking the Lorusso Declaration and award all other relief that this Court deems just and appropriate.

DATED: August 5, 2011

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**CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on August 5, 2011, I caused copies of **CLASS COUNSEL'S EMERGENCY MOTION TO QUASH DON HAVILAND'S UNAUTHORIZED NOTICES TO ATTEND AUGUST 8, 2011 CONTINUED TRACK TWO FAIRNESS HEARING AND MOTION FOR SANCTIONS AGAINST HAVILAND** to be served on all counsel of record.

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/s/ Steve W. Berman  
Steve W. Berman